

# SENATE BILL REPORT

## HB 2356

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As of February 16, 1996

**Title:** An act relating to review of shoreline development permits.

**Brief Description:** Limiting review of shoreline development permits.

**Sponsors:** Representatives Hymes, Koster, Thompson, Sterk, Radcliff, Cairnes, Pelesky, Blanton, Quall, Goldsmith, Hargrove and Mulliken.

**Brief History:**

**Committee Activity:** Ecology & Parks: 2/23/96.

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### SENATE COMMITTEE ON ECOLOGY & PARKS

**Staff:** Gary Wilburn (786-7453)

**Background:** State voters adopted the Shoreline Management Act in 1971 by approving an alternative measure to Initiative 43.

1. Shoreline master programs. The Shoreline Management Act requires every county and city to adopt a shoreline master program under state guidance for all shoreland areas within its jurisdiction. A shoreland area is defined to include bodies of water (other than small streams or small lakes), floodways, many wetlands, and areas landward for a distance of 200 feet.

A proposed local shoreline master program does not become effective unless the Department of Ecology approves the program as being consistent with both the Shoreline Management Act and the state shoreline master program that is adopted by the department. The action of the department approving or rejecting a shoreline master program is appealable to the Shoreline Hearings Board, if the county or city does not plan under all the requirements of the Growth Management Act, or to the Growth Management Hearings Board, if the county or city plans under all the requirements of the Growth Management Act.

2. Shoreland substantial development permits. Development activity within the shoreland area is allowed only if consistent with the local shoreline master program. In addition, most development activity within the shoreland area is allowed only if the county or city, within whose planning jurisdiction the shoreland area is located, issues a shoreline substantial development permit authorizing the development activity. Counties and cities are required to adopt programs to administer their shoreline substantial development permit programs.

Counties and cities may provide for variances and conditional use permits as part of their permit programs, but variances and conditional use permits must be submitted to the Department of Ecology for its approval or disapproval.

A "substantial development" includes most development with a total cost or fair market value of \$2,500 or more, or any development that "materially interferes with the normal public use of the water or shorelines of the state." However, among other activities, a "substantial development" does not include a number of activities, including: (1) normal maintenance or repair of existing structures or developments; (2) construction and practices normal or necessary for farming, irrigation, and ranching activities; and (3) construction of a single family residence for use by the person who constructs the residence or use by his or her family.

The applicant for a substantial development permit has the burden of proving that the proposal is consistent with permit requirements.

A party aggrieved over the action by a county or city on an application for a substantial development permit may appeal the action to the Shorelines Hearings Board. A person seeking review has the burden of proof. Review by the Shorelines Hearings Board is under the Administrative Procedure Act. Appeal of a decision by the Shorelines Hearing Board may be made to superior court.

**Summary of Bill:** As part of its automatic review of variances and conditional use permits issued by a county or city under its shoreline substantial development permit program, the Department of Ecology may rely only on evidence that is part of the record before the county or city.

Review by the Shorelines Hearings Board on an appeal of a shoreline substantial development permit must be on the record and the board may not substitute its judgment for that of a county or city, nor rely on evidence that is not part of the record before the county or city. The board must give substantial deference to the county's or city's interpretation of its shoreline master program and may only invalidate a county's or city's decision if it was predicated on a clearly erroneous interpretation or was not supported by substantial evidence. Further, a board may not invalidate a county's or city's decision based upon any provision of a county's or city's shoreline master program that exceeds requirements of the Shoreline Management Act.

**Appropriation:** None.

**Fiscal Note:** Not requested.

**Effective Date:** Ninety days after adjournment of session in which bill is passed.